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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE RAYMOND PENAFLO, R,

Defendant.

CASE NO. 1:22-CR-00206-ADA-BAM

STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXCLUDE TIME UNDER
SPEEDY TRIAL ACT; FINDINGS AND ORDER

DATE: January 11, 2023
TIME: 1:00 p.m.
COURT: Hon. Barbara A. McAuliffe.

BACKGROUND

This case is set for a status conference on January 11, 2023. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has

1 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 2 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 3 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 4 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 5 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 6 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 7 or in writing”).

8 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 9 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 10 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 11 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 12 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 13 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 14 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 15 and the defendant in a speedy trial.” *Id.*

16 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 17 T4). The Government’s position is that although the Speedy Trial Act does not directly address
 18 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
 19 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
 20 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d
 21 764 (9th Cir. 1981). The court recognized that the eruption created “appreciable difficulty” for the trial
 22 to proceed. *Id.* at 767-69; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001)
 23 (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant
 24 public emergency).

25 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt
 26 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-
 27 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act
 28 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL

1 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is
2 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked
3 speedy trial rights since the case's inception; (4) whether a defendant, if detained, belongs to a
4 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness
5 of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes;
6 (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed;
7 and (7) whether the district court has the ability to safely conduct a trial. *Id.*

8 In light of the foregoing, this Court should consider the following case-specific facts in finding
9 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)
10 (Local Code T4). If continued, this Court should designate a new date for the status conference. *United*
11 *States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be
12 "specifically limited in time").

13 STIPULATION

14 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
15 through defendant's counsel of record, hereby stipulate as follows:

- 16 1. By previous order, this matter was set for status on January 11, 2023.
- 17 2. By this stipulation, the defendant now moves to continue the status conference until
18 March 8, 2023, and to exclude time between January 11, 2023, and March 8, 2023, under 18 U.S.C. §
19 3161(h)(7)(A).
- 20 3. The parties agree and stipulate, and request that the Court find the following:
 - 21 a) The government has represented that the discovery associated with this case
22 includes investigative reports, photographs, and other documents. All of this discovery has been
23 either produced directly to counsel and/or made available for inspection and copying.
 - 24 b) Counsel for defendant desires additional time to review discovery, consult with
25 her client, and discuss potential resolutions with her client.
 - 26 c) Counsel for defendant believes that failure to grant the above-requested
27 continuance would deny her the reasonable time necessary for effective preparation, taking into
28 account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of January 11, 2023 to March 8, 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(i) and (iv) [Local Code T4] because it results from a continuance granted by the Court at the defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: January 3, 2023

PHILLIP A. TALBERT
United States Attorney

/s/ ANTONIO J. PATACA
ANTONIO J. PATACA
Assistant United States Attorney

Dated: January 3, 2023

/s/ CHRISTINA CORCORAN
CHRISTINA CORCORAN
Counsel for Defendant
JOSE RAYMOND
PENAFLORE,

FINDINGS AND ORDER

IT IS ORDERED that the status conference set for January 11, 2023, at 1:00 p.m. is continued until **March 8, 2023, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.**

IT IS FURTHER ORDERED THAT the period of time from January 11, 2023, through March 8, 2023, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A), 3161(h)(7)(B)(i) and (iv) because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: **January 3, 2023**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE